



## POLICY ON THE DUTY TO ACCOMMODATE



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

Canada



## Policy on the Duty to Accommodate

- Introduction
- Effective Date
- Policy Objective
- Policy Statement
- Application
- Legal Framework
- Definitions
- Roles and Responsibilities
- Recourse
- Monitoring and Reporting
- Access to Information and Confidentiality
- References
- Appendices

### **Introduction**

The Canada Border Services Agency (CBSA) recognizes the importance of a diverse workforce, and values its employees and their individual contributions to the Agency's objectives.

It acknowledges that accommodation is a fundamental aspect of the *Canadian Human Rights Act (CHRA)* and that, under the *Employment Equity Act (EEA)* certain reasonable accommodations may be required from time to time to achieve a degree of workforce representation of designated groups.

The policy and guidelines aim to ensure that the CBSA's policies and practices are inclusive from the outset and provide a structured process for dealing with accommodation requests with a view to enabling certain individuals to perform their assigned duties to the best of their ability, in a workplace that is responsive to their individual requirements.

### **Effective Date**

The effective date of this policy is June 16, 2011.

### **Policy Objective**

The objective of this policy is to promote a work environment that is inclusive and non-discriminatory, and to ensure a consistent and coordinated approach to accommodation of its employees in accordance with the *CHRA*.



## **Policy Statement**

CBSA will establish an effective system to ensure an inclusive workplace and the provision of individual workplace accommodation.

CBSA is committed to ensuring that:

- All employees and candidates will be able to contribute their skills and experience to the organization;
- All business activities, including policies, practices, procedures or procurements are non-discriminatory; and that
- employees and candidates are advised about their right to accommodation pursuant to the *CHRA*.

CBSA will respond in a timely, confidential and effective manner to requests or requirements for individual accommodation in order to ensure full and productive participation in the workplace.

## **Application**

This policy applies to all CBSA employees,<sup>1</sup> persons participating in staffing processes carried out by the Agency and employees covered by the *CHRA*.

## **Legal Framework**

The policy is intended to address certain of the Agency's responsibilities and obligations stemming from the *CHRA* and the *EEA*.

The *EEA* requires that in implementing employment equity employers make such reasonable accommodations as will ensure that persons in designated groups (women, aboriginal peoples, persons with disabilities and visible minorities) achieve a certain degree of representation in each occupational group in the Agency's workforce.

The CBSA is also committed under the *EEA* to achieving workforce representation and correcting the conditions of disadvantage in employment experienced by the designated groups (women, aboriginal peoples, persons with disabilities, and visible minorities) by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

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<sup>1</sup> Definition glossary page 4



The CHRA stipulates that it is a discriminatory practice, directly or indirectly, (a) to refuse to employ or continue to employ any individual, or (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. The prohibited grounds under the CHRA are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted. The CHRA imposes an obligation on employers to provide reasonable accommodation to employees to the point of undue hardship in respect of prohibited grounds under the Act.

The CHRA also establishes the extent of the duty to accommodate, stating "it is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by the employer to be based on a *bona fide occupational requirement*;"<sup>2</sup>

## **Definitions**

### **In this policy:**

#### **Bona fide occupational requirement (BFOR)**

A *bona fide* occupational requirement (BFOR) is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship.

#### **Candidate**

Includes applicants from within and from outside the federal public service, as well as existing employees who are participating in a staffing process.

#### **Duty to Accommodate**

Refers to the obligation of the employer to take steps to mitigate disadvantage to employees and candidates resulting from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the CHRA. Needs that must be accommodated to the point of undue hardship result from the following grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

#### **Employees**

Includes full-time, part-time, casual, seasonal (on season), term and indeterminate employees.

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<sup>2</sup> Definition glossary page 4.



### **Employment and employment-related opportunities**

Includes appointments, promotions, secondments, assignments and training and career development opportunities.

### **Medical Practitioner**

A medical professional as recognized by and meeting the licensing requirements under the Public Service Health Care Plan:

<http://www.njc-cnm.gc.ca/directive/index.php?did=9&lang=eng> .

### **Selection Processes**

Includes internal or external advertised or non-advertised selection processes that result in a permanent or temporary appointment or deployment, an assignment, secondment or a training or career development opportunity. Selection processes encompass all related activities such as establishing qualifications, advertising, assessment, giving notice of an appointment recourse, as well as any related communications with candidates.

### **Undue Hardship**

Describes the limit, beyond which organizations are not expected to accommodate.

Section 15 (2) of the *CHRA* states that "it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost".

### **Work-related events**

Work-related events include conferences, retreats, work-sponsored social events, seminars and information sessions, whether conducted inside or outside the workplace.

### **Roles and Responsibilities**

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.

The Director General, Labour Relations and Compensation Directorate will ensure the proper application and interpretation of this Policy.

### **Employee or Candidate will:**

- Inform his/her manager/supervisor of his/her accommodation needs;
- Inform his/her manager/supervisor if their needs change or if the accommodation is no longer sufficient or required, including returning of equipment if no longer needed;



- Collaborate with his/her manager/supervisor and any other stakeholder to find the most appropriate accommodation to meet his/her needs;
- Provide supporting documentation (e.g, medical certificate indicating the individual's functional limitations and projected duration) if there are restrictions or the accommodation needs cannot be clearly determined;
- Accept a reasonable accommodation option when it meets their identified needs;
- Provide a rationale for not accepting a reasonable offer of accommodation.

#### **Managers/Supervisors will:**

- Consult with the employee/candidate to determine the nature of the accommodation required;
- Engage in an individualized assessment of the employee's need for accommodation and address each request on a case by case basis;
- Consult with the Regional Disability and Accommodation Case Coordinator (DACC) where appropriate;
- Take an active role in exploring and considering options/alternative approaches and solutions to accommodate the employee/candidate;
- Initiate the accommodation procedure where she or he has knowledge of an employee or candidate's need for accommodation, but is unable for any reason to state that need;
- Consider all options for meeting accommodation needs, including adaptive technology or devices, modified work stations, quiet space for prayer, altered work schedules, etc.;
- Where addressing the accommodation request will take some time, consider at an early stage, whether there are interim measures which could be put in place on a temporary basis;
- Identify when access to the National Job Accommodation Fund may be required;
- Respect the employee's right to confidentiality and keep information/medical records confidential and ensure that all records are stored in a locked space;
- The manager is responsible for consulting with the bargaining agent where the employee being accommodated requests that the bargaining agent be consulted, or in situations where there is an impact on other bargaining unit members or on the collective agreement. The manager will do so in addition to consulting with the appropriate HR advisors and, if required, senior management;
- Grant accommodation requests in a timely manner, up to the point of undue hardship, by providing the employee/candidate with a reasonable offer of accommodation and associated transition plan (if required);
- Follow up on requests for temporary or permanent accommodation;
- Monitor the accommodation plan/agreement if the circumstances change or the solution is no longer working;
- Provide access to training on use of any upgraded or new adaptive technology/equipment;





- Ensure that work-related events are fully accessible to all participants, up to the point of undue hardship.

**The Bargaining Agent is expected to:**

- Facilitate the accommodation needs of their members by supporting the reasonable efforts of the employer to accommodate an employee up to the point of undue hardship;
- Contribute to the review of corporate policies, procedures, practices, and activities to identify and recommend changes;
- Foster an environment in which accommodation needs can be communicated;
- Support, with the agreement of the person requesting accommodation, reasonable measures that result in the least disruption to operations while meeting the needs of the person requesting accommodation subject to undue hardship.

**Human Resources:**

**Labour Relations and Compensation Directorate will:**

- Act as a resource to interpret, advise and consult on the CBSA Policy on the Duty to Accommodate, and related acts, regulations, policies and practices related to accommodation;
- Consult with the bargaining agents on accommodation issues, as required;
- Assist management in responding to complaints or grievances related to duty to accommodate issues;
- Manage the National Job Accommodation Fund.

**National Coordinator, Disability and Accommodation Case Management Program will:**

- Lead in the delivery and management of the duty to accommodate program;
- Consult and collaborate with employee representatives, senior/middle management, supervisors and employees, and with central agencies on the various policy aspects and issues pertaining to accommodation in the workplace;
- Monitor, evaluate and report on the implementation of the duty to accommodate within CBSA through quarterly status reports prepared by the regional DACCs;
- Monitor requests for accommodation on an ad hoc basis to ensure the policy and procedures have been correctly applied;
- Recommend, develop and implement communication plans and education, training and awareness sessions on the duty to accommodate;



- Monitor quarterly reports for trends, issues and to evaluate the effectiveness of the duty to accommodate program;
- Review the policy on an annual basis and revise as required.

**National Employment Equity & Diversity Program will:**

- Act as a resource to interpret and consult on the requirements of the Employment Equity Act;
- Promote diversity in employment policies, procedures and practices and assist in human resources planning to help create and maintain a workforce that is inclusive and representative reflecting labour market availability.

**Corporate Resourcing will:**

- Promote diversity during the selection process, and ensure that national selection standards and assessment tools do not constitute barriers, and that candidates are provided with appropriate accommodation.

**Staffing Advisors will:**

- Consult with specialists from the Personnel Psychology Centre concerning information, guidance and recommendations on assessment accommodation matters for Public Service Commission (PSC) tests, or for guidance on accommodating individuals when using agency tools;
- Assist in the provision of duty to accommodate measures.

**Regional Human Resources Directors will:**

- Ensure that processes and systems are in place to manage the delivery of the duty to accommodate program in their respective regions;
- Monitor and evaluate the effectiveness of the regional delivery of the duty to accommodate program.

**Regional Disability and Accommodation Case Coordinator (DACC) will:**

- Manage and coordinate the regional CBSA duty to accommodate program;
- Administer and communicate associated duty to accommodate policies, expectations and practices;
- Collaborate with all stakeholders to develop strategies for the retention of employees with accommodation needs;





- Coordinate with compensation & benefits professionals within and external to CBSA to synchronize information provision as it relates to duty to accommodate requirements;
- Obtain or coordinate evaluations and services including functional job assessments, functional capacity evaluations, ergonomic assessments, etc;
- Assist CBSA employees and managers with permanent, temporary and/or transitional work options and reasonable accommodation measures;
- Act as a resource for CBSA employees, supervisors and managers to interpret and consult on Federal, Provincial and CBSA regulations, policies, practices and bargaining agent agreements relating to the duty to accommodate in the workplace;
- Maintain status reports on the management of duty to accommodate cases in their respective regions;
- Keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.

#### **Regional Employment Equity Coordinators will:**

- Refer duty to accommodate inquiries and cases to the Regional Disability and Accommodation Case Coordinator.

#### **Recourse**

If an accommodation request has been denied and the employee or candidate is not satisfied with the response of the manager or selection board, employees and candidates are encouraged to communicate with their manager or selection board. All parties are encouraged to utilize alternative dispute resolution approaches in order to resolve their concerns.

The employee should utilize all internal avenues, i.e. informal complaint, ICMS (informal conflict management system), bargaining agent (if applicable), grievance process, before considering a complaint to the Canadian Human Rights Commission (CHRC). Note that it is the employee's responsibility to consult the relevant collective agreement, terms and conditions of employment or legislation to determine the time limits for seeking recourse.

#### **Monitoring and reporting**

Labour Relations and Compensation Directorate will monitor the application of this policy and take any corrective measures required to ensure compliance.

The Regional DACCs will keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.



All documents relating to specific requests for accommodation will be kept confidential and will only be disclosed with the consent of the employee or candidate. The CBSA will comply with all requirements of the *Privacy Act* to protect personal information.

### **References**

Canadian Human Rights Act

Employment Equity Act

Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service

Guide for Assessing Persons with Disabilities – How to determine and implement assessment accommodations, Public Service Commission

A Place for All: A Guide to Creating an Inclusive Workplace, Canadian Human Rights Commission

**Note: This policy is available in alternative formats upon request.**

## **Appendix A**

### **Process for Duty to Accommodate Requests**

Each case must be assessed on a case-by-case basis, which means that each case must be considered individually. Even where an employee does not make a formal request for accommodation, the employer may have an obligation to offer it in certain circumstances.

Managers, Regional DACCs, and employees seeking accommodation are encouraged to work in collaboration and to benefit from available resources, such as any local, regional, or national association dedicated to providing education, accommodation services, disability specific information, or some combination of these (e.g. the Canadian National Institute for the Blind (CNIB), the Canadian Hard of Hearing Association (CHHA)).

1. Employee makes a verbal request for accommodation to his/her supervisor/manager.
2. To facilitate the duty to accommodate process, an employee should make his/her request in writing along with appropriate supporting documentation and additional information to his/her supervisor/manager if he/she:
  - Requires long-term, extensive accommodation or changes to the physical work space;
  - Requires a flexible work arrangement as part of the accommodation;
  - Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.
3. The supervisor/manager should consult with the employee in order to seek any clarification or discuss initial options for a reasonable accommodation.
4. The supervisor/manager reviews the request and consults with the Regional Disability and Accommodation Case Coordinator who may in turn seek advice from other relevant subject matter experts (e.g. assets/accommodation section, Corporate Labour Relations, Uniforms Program, Arming, Resourcing, etc.).
5. Supervisors/managers may also consult with qualified professionals/stakeholders, with the employee's consent, to determine the best accommodation to meet the employee's needs.



6. Review accommodation options available first at level or, if required, at a lower level after all other avenues have been exhausted.
7. Where a supervisor/manager sees that addressing the accommodation request will take some time, he or she should consider at an early stage whether there are interim measures which could be put in place on a temporary basis.
8. The supervisor/manager should consult with his/her respective manager if the request will affect the operational functioning of the division/branch/region etc.; or could entail an undue hardship including a potentially significant financial implication to the organization. The supervisor/manager should also review the criteria for reimbursement of costs from the National Job Accommodation Fund.
9. If the proposed accommodation measure is satisfactory to the employee, the accommodation will be provided and if necessary, documented with an accommodation plan. The employee and the supervisor/manager will both sign the plan.
10. The manager will provide details in writing to justify a decision where an accommodation has been denied.
11. The supervisor/manager should keep a record of the various accommodations proposed and the reason for accepting or rejecting each option.

Managers will allow employees with specific needs to retain the technical aids, equipment and support materials as long as they are in the federal public service (This means permitting employees to take the equipment with them when they move to another department, agency, branch, division or unit).

#### **Notes:**

Medical information should be provided by the employee's medical practitioner, where applicable, and should include a description of the employee's functional limitations and/or restrictions as they relate to their duties as well as whether it is likely to be a permanent or temporary situation. Supervisors and managers cannot request specific information on diagnosis or treatment details.

Where an employee's own medical practitioner is not able to determine the information required on the medical certificate, or clarification of functional limitations is needed, it may be necessary to refer the employee to Health Canada or other expert advisors for an evaluation.



All medical information is confidential; it is to be stored in a locked space and kept separate from the employee's personnel file. Access to this information should be limited and shared only on a need-to-know basis with the consent of the employee.

Although managers (and those providing the accommodation) are authorized to access information pertaining to the functional limitations imposed by an employee's accommodation needs, they are generally not at liberty to know the diagnosis. However, the manager may ask for clarification of the limitations/restrictions should the employee or the medical practitioner not provide sufficient information.



## **Appendix B**

### **Duty to Accommodate during a Selection Process**

1. Managers and Human Resources will ensure that the Standards for selection and assessment do not discriminate on any prohibited ground of discrimination.
2. Regional Human Resources will ensure that candidates are informed of their right to accommodation.
3. Regional Human Resources will inform candidates in a timely manner of the evaluation tools that will be used, in order that the candidates may identify a need, where applicable.
4. Regional Human Resources will ensure that all employment opportunities are available in an accessible format.
5. Regional Human Resources and hiring managers will ensure that the assessment methods or tools used in the staffing process, including tests and interviews, accurately assess the qualifications required, do not constitute a rule, practice or physical barrier that has, or may have, an impact on individuals or groups protected under the *CHRA*, or on designated group under the *EEA*, and that they assess candidates fairly.
6. Once the candidate requests an accommodation, Management and Regional Human Resources will consult with the candidate to identify the nature of the accommodation and, if necessary, consult appropriate health care professionals and others with the candidate's consent, to determine the appropriate accommodation for that person.
7. Managers and Human Resources (HQ and Regions) may consult and collaborate with bargaining agents or other employee representatives where an employee being accommodated requests that a bargaining agent or other employee representative be consulted, when required.
8. All parties will respect the candidate's right to privacy and confidentiality and accommodate up to the point of undue hardship.





## **Appendix C**

### **Procedure for Accessing the National Job Accommodation Fund**

#### **The National Job Accommodation Fund**

The Canada Border Services Agency (CBSA) National Job Accommodation Fund has been established to cover certain costs of the duty to accommodate for CBSA employees. Only duty to accommodate costs of \$500.00 or more are covered by the fund.

#### **Criteria**

Note: Standard office equipment/furniture such as ergonomic chairs, 17 inch monitors, and standard height adjustable workstations are not covered by the fund.

#### **Examples of eligible costs**

This list is not exhaustive; there may be other eligible costs based on the employee's individual circumstances. Please consult with your Regional DACC.

- Adaptive Technology (hardware and software)
- Custom furniture, equipment
- Interpreters for deaf and hearing-impaired employees
- Sign language training for co-workers
- Alternate formats for printed material (Braille, large print documents)

#### **Submitting a request**

##### **Employees**

Upon advising your manager of your accommodation needs that may incur certain expenses, complete a Request to Access the National Job Accommodation Fund (NJAF) form and submit it to your manager along with any required supporting documentation.

##### **Managers**

Review the information on the NJAF form and request clarification/additional information/documents, if necessary. Submit completed Accommodation Forms and supporting documentation to your Regional DACC for processing by Labour Relations and



Compensation Directorate or if there is no local coordinator in your area, please submit the request directly to:

National Coordinator, Disability and Accommodation  
Case Management Program  
Labour Relations and Compensation Directorate  
99 Metcalfe Street, 3<sup>rd</sup> Floor  
Ottawa, ON K1A 0L8

### Approval Process

1. The National Coordinator, Disability and Accommodation Case Management Program will review the request and, based on the information provided, will approve it, reject it, or notify the Regional DACC or manager that additional information is required before a decision can be reached.
2. Upon approval, the manager will be granted authority to charge applicable costs to a specified financial code that will be provided at the time of approval. If the cost has already been incurred, the amount will be reimbursed to the manager's budget.



## **Appendix D**

### **Questions and Answers**

#### **What does Bona Fide Occupational Requirement (BFOR) mean?**

A BFOR is a requirement of the job that is adopted in good faith and which is reasonably necessary for the accomplishment of a legitimate work-related purpose. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship. For example, an airline may require its pilots to have a certain level of uncorrected vision, hearing, and manual dexterity in order to land a plane with all its passengers, safely, without instruments in an emergency. Although this requirement could prevent persons with certain disabilities from being a pilot, this standard is essential to carrying out the duties of a pilot's job.

#### **What does undue hardship mean?**

Undue hardship describes the limit, beyond which organizations are not expected to accommodate. Section 15(2) of the *CHRA* states that "it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and costs."

#### **Who is responsible for requesting accommodation?**

The responsibility for requesting accommodation rests with the person requiring accommodation. Although the accommodation solution shall remain a decision mutually agreeable to all parties involved, the person requiring accommodation should also explain the sorts of accommodation he or she considers appropriate, which will be supported by medical professionals where necessary.

The duty to accommodate process is a shared responsibility between the employer, employee and bargaining agent. Where an employer has initiated a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate, the person requiring accommodation has a duty to facilitate the implementation of the proposal.

If an employee does not acknowledge a need for accommodation and a manager suspects the employee is suffering from some addiction or condition that is impacting the workplace or the employee's work performance, the manager should make inquiries, inform the employee that



there are services to help (e.g. EAP) and offer to accommodate the employee. The types of behaviours could include persistent lateness, change in behaviour that is causing problems with co-workers or managers, missed meetings or deadlines, etc. It is recommended the manager keep a record of all meetings with an employee who denies the need for accommodation (it is advised that this record be shared with the employee for understanding, clarification and acceptance of what has transpired during the meeting). Should the employee's health issue be such that it affects the employee's ability to perform his/her duties and/or poses a health and safety risk, the manager should contact his/her Regional Labour Relations Advisor for further guidance.

Managers should also ask if any accommodation is needed when an employee is returning to work after a lengthy absence, even if the employee hasn't requested it.

### **How do employees/candidates request accommodation?**

An employee may request an accommodation by speaking with their supervisor/manager and/or completing the request for accommodation form (see Appendix A: "Process for duty to Accommodate Requests"). The supervisor/manager reviews the request and consults with appropriate advisors (e.g. regional human resources advisors, assets/accommodation section, Disability & Accommodation Case Coordinator). If the accommodation request is denied, the reasons should be clearly communicated by the supervisor/manager (in writing) to the employee.

An employee should make his/her request in writing to their manager if he/she:

- Requires long-term, extensive accommodation or changes to the physical work space;
- Requires a flexible work arrangement as part of the accommodation;
- Is a person with a disability and requires any form of accommodation (see the Treasury Board Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service);
- Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.

Candidates in a selection process must request accommodation by informing the staffing advisor, assessment board member or hiring manager of their accommodation need. Candidates should request accommodation for each stage of assessment where accommodation is needed.

## **Are Employees entitled to accommodation for needs other than disability?**

Yes. Accommodation may also be appropriate on the basis of other grounds including religion, marital or family status

For example, employees' religious beliefs may require them to be absent from work on days of religious observances, to have prayer breaks during working hours, to observe a certain dress code, or to follow a certain dietary plan. In order to accommodate employees who request time off for religious obligations, managers should consider a number of flexible working arrangements.

Other employees may require accommodation based on marital or family status. Employers have the same responsibility to accommodate an employee's family status including family responsibilities, such as:

- Allowing for leave without pay for the care of family;
- Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- Providing suitable options to allow breast feeding as required.

Additional information is available from the Canadian Human Rights Commission website or by contacting regional DACCs.

All examples of accommodation related to leave should be reviewed in accordance with the collective agreement.

## **What are some examples of possible accommodations?**

The duty to accommodate is often identified with the removal of physical barriers or the provision of technical devices within the workplace. However, changes to existing policy and procedure can also create the need for accommodation. An accommodation measure may be as simple as adaptive technology, modifying the work, or exchanging job tasks with other employees.



Examples of accommodation measures include, but are not limited to, the following:

- Adaptive technology;
- Providing work space and furnishings appropriate to the nature of the disability;
- Flexible work arrangements;
- Providing interpreters for deaf and hearing-impaired employees;
- Converting printed matter to alternative media and reader services for employees who are visually impaired;
- Changes to work sites;
- Attendant services;
- Provision of alternate formats (e.g. Braille, large print documents, etc.);
- Bundling duties;
- Additional time to write a test.

**Note:** These examples may not be applicable in all cases, and individual accommodations will be determined based on the needs of the employee as well as operational requirements. Reasonable accommodation will be provided to the point of undue hardship.



## **Appendix E**

### **Duty to Accommodate on the Basis of Family Status**

#### **Definition:**

Family status is one of the prohibited grounds of discrimination covered by the *Canadian Human Rights Act*. The Canadian Human Rights Commission defines “Family Status” as follows:

““Family status” refers to the inter-relationship that arises from bonds of marriage, consanguinity or legal adoption, including of course, the ancestral relationship, whether legitimate, illegitimate, or by adoption, as well as the relationships between spouses, siblings, in-laws, uncles or aunts, and nephews or nieces, cousins, etc.

Discrimination related to the fact that spouses work together for the same employer may be considered under the grounds of both marital status and family status.”

As set out in the remainder of this appendix, in the context of family status, accommodation can be associated with caregiving needs.

#### **Needs related to caregiving:**

An individual’s caregiving needs will vary over the course of a lifetime. The nature of the needs associated with caring for children will be, for example, significantly different from the nature of the needs associated with caring for an aging parent. Some needs will remain stable over lengthy periods of time, while others may be short term or temporary.

Not every circumstance related to caregiving will give rise to a duty to accommodate. Where rules, requirements, standards or factors have the effect of disadvantaging persons who have substantial caregiving responsibilities related to their family status, either by imposing burdens that are not placed on others or withholding or limiting access to opportunity, benefits or advantages available to others, a duty to accommodate caregiving needs related to family status may arise.

#### **Assessment of accommodation requests based on caregiving needs:**

Each request must be reviewed on an individual basis and assessed on its own particular facts. Managers, supervisors and all those involved in the accommodation process should follow the steps outlined in “Appendix A Process for Duty to Accommodate Requests” of this policy.



When assessing requests based on caregiving needs, supervisors and managers should consider both the nature of the caregiving responsibility and the conflict between that responsibility and the organization's rules, requirements, standards, processes or other factors, on a case-by-case basis.

The more substantial the caregiving obligation at stake, the more likely it is that a duty to accommodate will arise.

### **Roles and responsibilities:**

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement reasonable accommodation solutions.

#### **--- Employer's obligation:**

Employers have the same responsibility to accommodate an employee's family status as they do for other protected characteristics, such as disability or religion. This means that employers must accommodate employees who experience adverse differentiation as a result of workplace standards, policies or practices because of their family status.

As with other prohibited grounds of discrimination, CBSA must accommodate an employee's family status accommodation request up to the point of undue hardship.

#### **--- Employee's obligation**

The person seeking accommodation has a responsibility to inform his or her manager of their accommodation needs based on family status and that there is a conflict between those needs and the organization's rules, requirements, standards, processes or procedures.

An individual seeking accommodation for family obligations must demonstrate that he or she has made real and diligent efforts to deal with the conflict between work and family obligations. For example, persons seeking accommodation based on caregiving needs may be expected to make reasonable efforts to first explore and avail themselves of outside resources available to them, such as daycare and community services, and/or to explore other options available to them, such as seeking the assistance of family members, prior to submitting an accommodation request to their supervisor or manager, except in emergency situations.

### **Examples of accommodation on the basis of family status:**

Most family status accommodation is a matter of flexibility. It may be made available on a one-time basis, or on a temporary or ongoing basis, depending on the circumstances.

As previously stated, each case must be assessed on an individual basis. Depending on the particular accommodation needs, the following options could be considered:

- Allowing for leave without pay for the care of family;
- Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- Providing suitable options to allow breast feeding as required.

When considering suitable leave options, it should be noted that managers and supervisors do not have to provide paid leave to employees who need to be away from the workplace during regular working hours unless there are suitable provisions to that effect in the relevant collective agreement or terms and conditions of employment.

Inflexible, excessive, or unpredictable work hours may pose barriers to persons with caregiving responsibilities. For example, given that many daycares operate from 8:00 a.m. to 6:00 p.m., some employees with small children may find it difficult to comply with a work schedule that requires them to start precisely at 8:00 a.m. Of course, there will be circumstances where the nature of the work demands specific start, finish and break times. Where such timetables are not a *bona fide* occupational requirement, supervisors and managers should consider adjusting hours of work to accommodate their employees' needs.

Where social supports for childcare, eldercare or for persons with disabilities are limited, employees with substantial caregiving responsibilities may require accommodations to shift scheduling.

For example, in situations where two parents with caregiving responsibilities work shifts, the following measures could be considered:

- Arranging shift schedules so the parents do not have overlapping shifts;
- Offering an assignment to an area that does not require shift work;
- Adjusting hours of work to coincide with hours where caregiving is available;
- Agreeing to an employee's request for part-time work.



In a situation where an employee working shifts also has a spouse working shifts elsewhere, supervisors and managers should make enquiries as to the elements of the spouse's work that are relevant to the employee's need for accommodation.

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Note: The material in this appendix has been copied and/or adapted from material found on the Canadian Human Rights Commission's and the Ontario Human Rights Commission's websites